

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY DAR ES SALAAM

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E.O. 11652: N/A

TAGS: EINV, TZ

SUBJECT: VON ZASTROW CLAIM

REFS: (A) DAR 3825, (B) STATE 253090, (C) DAR 858,
(D) STATE 53320, (E) DAR 603, (F) LETTER FROM VON ZASTROW
TO SEN. CRANSTON DATED 2/14/76 (PREVIOUSLY POUCHED),
(G) DAR 293, (H) STATE 200489 (8/22/75), (I) DAR 2779
(7/31/75), (J) LUCIUS-GAY LETTER OF 3/10/75

1. WE WOULD APPRECIATE EMBASSY'S JUDGMENT, AS WELL AS
THAT OF WITHERS-PAYNE, ON WHETHER NEGOTIATIONS REPORTEDLY
INTENDED TO BE HELD AT MOSHI (REF A) SEEM LIKELY TO HELP
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BREAK THE LOGJAM IN THIS CASE, OR WHETHER THE PARTIES ANTI-
CIPATE MERELY GOING OVER OLD GROUND. HAS WITHERS-PAYNE BEEN
IN CONTACT WITH VON ZASTROW'S SUCCESSOR TO DISCUSS THE
CLAIM? IF SO, WHAT WAS THE CLAIMANT'S REACTION, AND WHAT

DO THEY INTEND TO DO NOW? WE WOULD ALSO BE INTERESTED IN KNOWING THE NATIONALITIES OF THE "20 OR 30" OTHER CLAIMANTS REPORTED REF A TO BE FACING SIMILAR PROBLEMS, AND WHAT THOSE PROBLEMS ARE. IF EMBASSY BELIEVES IT WOULD BE HELPFUL, WE SHOULD RENEW OUR EXPRESSION OF CONCERN FOR AN EQUITABLE RESOLUTION OF THIS CASE IN THE CONTEXT OF THE POSSIBLE RESUMPTION OF TALKS.

2. IN VIEW OF THE CONTINUING GREAT DISPARITY BETWEEN THE PARTIES' VALUATIONS OF THE VON ZASTROW PROPERTIES, WE ALSO BELIEVE IT IS APPROPRIATE AT THIS POINT TO BEGIN ASSEMBLING DETAILED INFORMATION ON HOW THEY ARRIVED AT THEIR RESPECTIVE FIGURES. IN ADDITION TO PROVIDING SOME BASIS FOR AN EVALUATION OF THE ADEQUACY OF THE TANGOV OFFER, SUCH INFORMATION MAY ALSO ENHANCE OUR ABILITY TO PLAY A "GOOD OFFICES" ROLE. BECAUSE OF THE RECENT DEATH OF VON ZASTROW (REF A), AND GIVEN THE PRESUMED FAMILIARITY OF WITHERSPAYNE WITH THE ELEMENTS OF THE CLAIM, WE BELIEVE THAT THE EMBASSY IS CURRENTLY IN THE BEST POSITION TO DO THIS. SINCE, AS REPORTED REF B, THE TANGOV IS APPARENTLY PREPARED TO EXPLAIN ITS VALUATION TO VON ZASTROW'S REPRESENTATIVE, THE EMBASSY MAY IN ITS DISCRETION SEEK THIS INFORMATION FROM THE TANGOV DIRECTLY OR IN COORDINATION WITH WITHERSPAYNE. PARAGRAPHS 3-7 BELOW RELATE OUR CURRENT UNDERSTANDING OF THE FACTS IN THE CASE, AND THE REMAINING PARAGRAPHS ARE INTENDED AS GUIDANCE FOR THE EMBASSY IN SEEKING TO DEVELOP ADDITIONAL INFORMATION.

3. AS WE UNDERSTAND IT (PRIMARILY FROM REFS C, E, AND F), IN 1959 VON ZASTROW PURCHASED A "DERELICT" COFFEE ESTATE IN TANZANIA, INVESTING OVER \$18,000 IN FOREIGN EXCHANGE AND BORROWING \$14,000 LOCALLY IN ORDER TO DO SO. DURING THE NEXT 15 YEARS, HE REINVESTED ALL PROFITS IN THE ESTATE, TOOK NO MONEY FROM IT OUT OF TANZANIA, AND PAID HIMSELF NEITHER A SALARY NOR A DIRECTOR'S FEE -- AND IN THE PROCESS MORE THAN DOUBLED THE HIGHEST PRODUCTION PREVIOUSLY ACHIEVED. HE ALSO ESTABLISHED A RELATED SAFARI BUSINESS -- LIMITED OFFICIAL USE
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USING HIS COFFEE ESTATE AS A BASE OF OPERATIONS -- WHICH NETTED HIM A MINIMUM OF \$8,500 ANNUALLY.

4. AT THE TIME OF THE EXPROPRIATION (OCTOBER 1973), VON ZASTROW'S PERSONAL BANK ACCOUNT WAS BLOCKED. SINCE HE HAD NO OTHER MONEY, HE THEREAFTER SOLD CERTAIN OF HIS HOUSEHOLD GOODS AND SAFARI EQUIPMENT (INCLUDING TRUCKS AND CARS), WITH THE PROCEEDS ENABLING HIM TO MEET OUTSTANDING DEBTS.

5. ALSO AT THIS TIME, VON ZASTROW CONDUCTED AN INVENTORY OF "UNEXHAUSTED IMPROVEMENTS" ON HIS PROPERTY. ACCORDING

TO VON ZASTROW, THIS STANDARD WAS ORIGINALLY THE STATED BASIS FOR PAYMENT OF COMPENSATION. HE CATEGORIZED HIS COFFEE ESTATE ASSETS AS FOLLOWS:

- BUILDINGS: BY SQUARE FOOTAGE AND CONSTRUCTION MATERIAL.
- COFFEE TREES: MATURE (IN FULL BEANING) AND IMMATURE.
- SHADE TREES: BY LINEAR FOOTAGE AND KIND OF TIMBER.
- BANANA TREES: MATURE AND IMMATURE.
- WELLS AND DAMS: BY DEPTH AND ACREAGE.
- DRAINAGE DITCHES AND FENCES: BY YARDS.
- FARM MACHINERY, TOOLS, SPARES, ETC.
- HARVESTED COFFEE IN STORAGE.

6. THE FIGURES WHICH HE ASSIGNED TO EACH CATEGORY WERE APPARENTLY BASED VARIOUSLY UPON ACTUAL CONSTRUCTION COST, PURCHASE PRICE (PRESUMABLY THE HISTORICAL COST TO VON ZASTROW), OR CURRENT MARKET PRICES. IN ASSIGNING VALUES TO CATEGORIES, VON ZASTROW CLAIMS (REF F) TO HAVE "COORDINATED WITH ALL AFFECTED FARMERS AND AN INDEPENDENT KENYA FIRM OF LICENSED EVALUATORS." IN THE CASE OF THE COFFEE ESTATE, HE CALCULATED HIS TOTAL "UNEXHAUSTED IMPROVEMENTS" AT TZ. SHS. 1,529,941 (\$210,000-\$220,000, AT THE THEN-LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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PREVAILING EXCHANGE RATE). REF C REPORTED THAT EMBASSY FILES REFLECT THE FOLLOWING BREAKDOWN: HOUSE AND OTHER BUILDINGS - \$98,000; COFFEE TREES - \$34,000; OTHER IMPROVEMENTS ON THE MORE THAN 200 ACRES OF LAND COMPRISING THE ESTATE - \$72,000; TOOLS AND OTHER MOVABLE PROPERTY - \$10,000. VON ZASTROW ALSO VALUED THE VEHICLES AND EQUIPMENT ASSOCIATED WITH HIS SAFARI BUSINESS AT A NET OF TZ. SHS. 140,000 (APPROXIMATELY \$20,000) AFTER DEDUCTING AMOUNT REALIZED FROM THE SALES REPORTED PARA. 4.

7. IN APRIL 1975 THE TANGOV OFFERED VON ZASTROW TZ. SHS. 128,678 (GROSS), WHICH WAS SUBSEQUENTLY INCREASED TO TZ. SHS. 133,528 IN JANUARY 1976, AFTER AN INTERVENING DEVALUATION OF TANZANIAN CURRENCY. IN EACH CASE, THIS AMOUNT WAS OFF-SET WITH UNSPECIFIED DEDUCTIONS TOTALLING TZ. SHS. 117,810, FOR A NET OFFER OF LESS THAN \$2,000. ACCORDING TO REF C, THE TANGOV OFFERS WERE BASED UPON "POTENTIAL PROFITABILITY", COMPUTED BY TAKING AN AVERAGE "VALUE" (PRESUMABLY GROSS INCOME) OVER 5 YEARS OF ACTUAL COFFEE PRODUCTION, MINUS A PERCENTAGE FOR EXPENSES, INCLUDING THE

OWNER'S SALARY (THE TANGOV EVALUATOR USED 80 PERCENT AS AN ILLUSTRATION). THE NET AMOUNT WAS THEN MULTIPLIED BY A SELECTED CAPITALIZATION RATE (WITH 4 REPORTEDLY BEING THE STANDARD MULTIPLIER). NEITHER THE EMBASSY NOR VON ZASTROW'S REPRESENTATIVE HAS APPARENTLY EVER SEEN A BREAK-DOWN OF THE TANGOV OFFER.

8. IN DISCUSSING THE CLAIM WITH VON ZASTROW'S REPRESENTA-

TIVE, EMBASSY SHOULD DRAW AS APPROPRIATE FROM THE INFORMATION AT PARAS. 3-7, AND SHOULD SEEK TO DETERMINE WHETHER THIS INFORMATION IS SUBSTANTIALLY CORRECT. IN ADDITION, WE ARE ALSO INTERESTED IN GETTING THE CLAIMANT'S RESPONSE TO THE FOLLOWING:

A. WERE THE SAFARI BUSINESS AND THE COFFEE ESTATE SEPARATE LEGAL ENTITIES? HOW WERE THEY OWNED? HOW WERE THEIR FINANCIAL STATEMENTS PREPARED, AND HOW WERE THE RESULTS OF THEIR OPERATIONS ACCOUNTED FOR? HAS AN INDEPENDENT VALUATION OF THE VON ZASTROW PROPERTIES EVER BEEN CONDUCTED? IF NOT, WHY NOT?

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B. FOR EACH OF THESE ENTERPRISES, WHAT WAS THE AMOUNT OF VON ZASTROW'S ORIGINAL INVESTMENT IN TANZANIA? FROM WHAT SOURCE WAS IT DERIVED, E.G. PERSONAL SAVINGS BROUGHT INTO THE COUNTRY, PRIVATE OR CORPORATE BORROWING, ETC?

C. WHAT IS THE ESTIMATED VALUE OF THE VON ZASTROW PROPERTIES AT THE TIME OF THE TAKEOVER ON A BOOK VALUE, REPLACEMENT COST, AND GOING-CONCERN BASIS? WHAT ARE THE COMPONENT FIGURES OF EACH VALUATION, AND HOW WERE THEY CALCULATED?

D. WHAT WERE THE OUTSTANDING LIABILITIES, IF ANY, OF THE PROPERTIES AT THE TIME OF THE TAKEOVER?

E. WHAT WAS THE NET RETURN TO VON ZASTROW (OR TO THE CONCERNED CORPORATIONS) ON AN ANNUAL BASIS FROM THE COFFEE ESTATE AND THE SAFARI BUSINESS, RESPECTIVELY?

F. WHAT WAS THE CONDITION OF THESE PROPERTIES AT THE TIME OF ACQUISITION? WHAT IMPROVEMENTS WERE MADE, AND IN WHAT AMOUNTS?

G. DID VON ZASTROW EVER PAY HIMSELF ANY SALARIES OR DIRECTOR'S FEES IN CONJUNCTION WITH THE BUSINESSES? IF SO, IN WHAT AMOUNTS AND WITH WHAT FREQUENCY?

H. WHAT WAS DONE WITH THE PROFITS OF THE ENTERPRISES, I.E., WERE THEY REINVESTED OR DISTRIBUTED AS DIVIDENDS? THE AMOUNTS IN EACH CATEGORY?

I. HOW DO THE FIGURES AT 8(C) AND 8(E) COMPARE WITH THOSE OF SIMILAR PROPERTIES IN TANZANIA AT THAT TIME? IF THERE IS A SIGNIFICANT VARIANCE, WHAT IS THE EXPLANATION FOR IT?

9. WE ARE PRIMARILY INTERESTED IN GETTING FROM THE TANGOV A DETAILED BREAKDOWN OF THE GROSS OFFER AND THE OFF-SETTING DEDUCTIONS USED IN ARRIVING AT A NET FIGURE, AND OF THE

RATIONALE UNDERLYING TREATMENT OF THE VARIOUS ITEMS. THE FOLLOWING POINTS SHOULD ALSO BE PURSUED AS APPROPRIATE. BEFORE DOING SO, HOWEVER, IT MAY BE HELPFUL TO DISCUSS LIMITED OFFICIAL USE
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THEM WITH WITHERS-PAYNE TO ELICIT HIS VIEWS OF HOW THEY MIGHT BE EXPANDED OR MODIFIED.

A. DOES THE TANGOV OFFER INCLUDE ANY AMOUNTS FOR THE LAND ON WHICH THE COFFEE ESTATE AND SAFARI BUSINESS WERE LOCATED (REF J)? IF NOT, WHY NOT?

B. WHAT 5-YEAR PERIOD AND CAPITALIZATION RATE WERE USED IN CALCULATING "POTENTIAL PROFITABILITY"? WHAT REASONING UNDERLIES THESE CHOICES?

C. IF VON ZASTROW PAID HIMSELF NEITHER A SALARY NOR DIRECTOR'S FEES, IS THIS TAKEN INTO ACCOUNT IN THE TANGOV COMPUTATION OF NET INCOME, OR HAS A STANDARD DEDUCTION BEEN APPLIED MECHANICALLY TO ALL SUCH PROPERTIES?

D. TO WHAT EXTENT DOES THE TANGOV OFFER TAKE INTO ACCOUNT VON ZASTROW'S RELATED SAFARI BUSINESS? REF J REPORTS THAT AN UNNAMED GERMAN NATIONAL HAD SIMILAR COMPLEMENTARY ENTERPRISES, BUT REFLECTED THE PROFITS FROM HIS SAFARI BUSINESS IN THE FINANCIAL STATEMENTS FOR HIS COFFEE ESTATE. THE REPORTED RESULT WAS THE APPEARANCE OF GREATER PROFITABILITY THAN IN THE CASE OF VON ZASTROW'S ESTATE, AND A CORRESPONDINGLY HIGHER TANGOV OFFER. IF VON ZASTROW'S SAFARI BUSINESS IS NOT INCLUDED AS AN ELEMENT OF COMPENSATION, WHAT IS THE BASIS FOR THIS APPARENTLY UNEQUAL TREATMENT?

10. WE LOOK FORWARD TO RECEIVING WHATEVER INFORMATION EMBASSY IS ABLE TO DEVELOP ALONG THE FOREGOING LINES. KISSINGER

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